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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,208	11/08/1999	EVA SIMMONS	000500-196	2331

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RONALD L GRUDZIECKI
BURNS DOANE SWECKER & MATHIS
PO BOX 1404
ALEXANDRIA, VA 223131404

EXAMINER

KIDWELL, MICHELE M

ART:UNIT

PAPER NUMBER

3761

DATE MAILED: 03/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/380,208

Applicant(s)

SIMMONS ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 – 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 15, the applicant claims a method of achieving an absorbent article that includes either a first or second scenario. The applicant follows with a second paragraph that recites additional limitations. It is unclear whether or not the second paragraph is intended to be part of the second scenario or if the second paragraph is applicable to both the first and second scenario. Correction and/or clarification are required.

For examination purposes, the examiner finds that the first scenario ends with the first comma in line 8 of the claim and that the rest of the claim language corresponds with the second scenario of the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 25 – 36 and 40 – 42 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Roe (US 5,607,760).

With reference to claim 15, Roe discloses a method of achieving in an absorbent article that includes an absorbent body disposed between a liquid-impermeable bottom sheet which is intended to lie distal from a wearer in use, a liquid-permeable upper sheet which is intended to lie proximal to the wearer, and at least one longitudinally extending liquid barrier on each side of a center line of the upper sheet made of essentially liquid-impervious material and fastened along or adjacent to a respective longitudinally extending side extremity of the absorbent article and comprising a free elastic sealing edge intended to be stretched against the wearer as set forth in col. 6, lines 38 – 53, col. 8, lines 50 – 56, col. 15, lines 53 – 56 and col. 25, lines 26 – 32.

Regarding claims 25 – 28, see the rejection of claim 15.

With reference to claims 29 – 34 and 41 – 42, Roe discloses an absorbent article that includes an absorbent body disposed between a liquid-impermeable bottom sheet which is intended to lie distal from a wearer in use, a liquid-permeable upper sheet which is intended to lie proximal to the wearer and at least one longitudinally extending liquid barrier on each side of a center line of the upper sheet, made of essentially liquid-impervious material and fastened along or adjacent to a respective longitudinally extending side extremity of the article and including a free elastic sealing

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edge intended to be stretched against the wearer as set forth in col. 6, lines 38 – 53 and col. 8, lines 50 – 56.

Regarding claims 35 – 36, see col. 8, lines 50 – 56, col. 15, lines 53 – 56 and col. 25, lines 26 – 32.

As to claim 40, Roe discloses an article wherein the sealing edge is comprised of a ribbon-like elastic film in col. 8, lines 50 – 56, through the incorporation of Dragoo (US 4,795,454).

Dragoo discloses an article wherein the sealing edge is comprised of a ribbon-like elastic film as set forth in col. 10, lines 31 – 65.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 – 24 and 37 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,607,760).

With reference to claims 16 – 24, Roe discloses a method of applying petroleum jelly to the leg cuffs of an absorbent article, thereby increasing the absolute value of ΔP and decreasing the pore radius.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to experiment with the amount of petroleum jelly in order to

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determine the most effective product since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 37 – 39, absent of a critical teaching and/or unexpected result, the examiner contends that the claimed limitations would be an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

Response to Arguments

Applicant's arguments filed December 20, 2002 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., resulting advantages explained in the application) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In reply to the applicant's argument that Roe does not suggest increasing the absolute value by influencing wetting angle or pore radius to improve sealing, the examiner disagrees. Roe discloses the use of petrolatum on the leg gathers, which according to the applicant's specification, is one way to reduce pore radius and increase the wetting angle. Roe may disclose the use of additional materials in conjunction with the petrolatum, however the use of the petrolatum, in any combination, will affect the pore radius and the wetting angle in the same fashion as claimed. The examiner

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contends that the disclosure of an additional surfactant when using the petrolatum is specifically related to treating the topsheet with the lotion composition (col. 23, line 43). However, Roe also sets forth that the lotion may be applied to any part of the diaper that comes into contact with the skin (col. 25, lines 26 – 32). These areas have not been subjected to the additional surfactant. Further, the examiner would like to point out that the applicant's specification states that having dirty skin vs. clean skin also affects the wetting angle of the skin. What is to say that the diaper of Roe in use (i.e. a diaper after waste has been emitted onto the diaper) vs. a clean diaper not in use will not meet the requirements of the claimed invention?

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
March 18, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700